

CHAPTER 10

REVIEWS

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10.1. DISPOSITIONAL REVIEW HEARINGS

10.1.1. *Purpose*

Following a child's placement in foster care, the court is required to conduct regular review hearings to assess the progress made in efforts to rehabilitate the family. The case plan, developed for and reviewed at the dispositional hearing, becomes the central and organizing tool in this on-going review process. The court rules state the main objectives of a dispositional review hearing:

- (a) court review of the progress made to comply with any order of disposition and with the case service plan prepared pursuant to MCL 712A.18f***;
- (b) court evaluation of the continued need and appropriateness for the child to be in foster care.¹

10.1.2. *Time*

The court must conduct a dispositional review hearing no later than 91 days following entry of the original dispositional order and every 91 days after that for as long as the child is subject to the jurisdiction, control, or supervision of the court or agency.² Quarterly reviews are required for all children in foster care except where there is a permanent foster family agreement or the child is placed with a relative and the placement is intended to be permanent.³ Those reviews are to continue even after a permanency planning hearing⁴ and after an order terminating parental rights.⁵

Upon motion of any party, or in the court's discretion, a review hearing may be accelerated to review any element of the case plan.⁶ The court is

¹. MCR 3.975(A)

². MCL 712A.19(3)

³. MCL 712A.19(4)

⁴. MCL 712A.19a(1)

⁵. MCL 712A.19c

⁶. MCL 712A.19(3)

required, at the dispositional hearing and at every regularly scheduled review hearing, to consider whether an earlier review hearing would be appropriate.⁷ In deciding whether to shorten the interval between review hearings, the court shall, among other factors, consider:

- (a) the ability and motivation of the parent to make changes needed to provide the child a suitable home environment;
- (b) the reasonable likelihood that the child will be ready to return home earlier than the next scheduled dispositional review hearing.⁸

10.1.3. *Notice*

The court is to ensure that notice of a dispositional review hearing is given in writing to the appropriate persons in accordance with the court rules⁹. The persons to receive written notice of a review hearing are:

- (a) The agency. The agency shall advise the child of the hearing if the child is 11 years of age or older.
- (b) The person or institution having court-ordered custody of the child.
- (c) If the parental rights of the child have not been terminated, the child's parents.
- (d) The guardian or legal custodian of the child.
- (e) If the child has a guardian ad litem, the guardian ad litem for the child.
- (f) If tribal affiliation has been determined, any tribal leader of the Indian tribe.¹⁰
- (g) The lawyer-guardian ad litem for the child, the attorneys for each party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.
- (h) If the child is 11 years of age or older, the child.
- (i) Other persons as the court may direct.¹¹

10.1.4. *Evidence*

The same rules of evidence applicable to initial disposition, apply at review hearings.¹² That is, the Michigan Rules of Evidence do not apply and all relevant and material evidence, including oral and written reports,

⁷. MCL 712A.19(9); 3.975(D)

⁸. MCR 3.975(D)

⁹. In accordance with MCR 3.920 and MCR 3.920(B)(2)

¹⁰. If there is any indication as to specific tribal affiliation, the petitioner must notify that tribe. *In re NEGP*, 245 Mich.App. 126; 626 N.W.2d 921 (2001)

¹¹. MCL 712A.19(4)

¹². MCR 3.975(E)

may be received by the court and be relied upon to the extent of their probative value.¹³

10.1.5. *Updated Services Plan*

The court shall consider the case service plan and any report by the agency responsible for the care and supervision of the child concerning efforts to prevent removal, or to rectify conditions that caused removal of the child from the home.¹⁴ The court is also required to consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, or relative with whom a child is placed, in addition to any other evidence offered at the hearing.¹⁵ The agency is required to consult with the foster parents when it updates and revises the case service plan, and shall attach a statement summarizing the information received from the foster parents to the updated and revised plan.¹⁶ The report of the agency that is filed with the court must be accessible to the parties and offered into evidence.¹⁷ The parties shall be given an opportunity to examine and controvert written reports and may be allowed to cross-examine individuals making reports when such individuals are reasonably available.¹⁸ Written reports, other than those portions made confidential by law, and case service plans, and court orders, including all updates and revisions of these, shall be available to the foster parents, child caring institution, or relative with whom the child is placed.¹⁹

10.1.6. *Review of Case Progress*

The statute requires the court to review on the record all of the following:

- (a) Compliance with the case service plan with respect to services provided or offered to the child and the child's parent, guardian, custodian, or nonparent adult if the nonparent adult is required to comply with the case service plan and whether the parent, guardian, custodian, or nonparent adult if the nonparent adult is required to comply with the case service plan has complied with and benefited from those services.
- (b) Compliance with the case service plan with respect to parenting time with the child. If parenting time did not occur or was

¹³. MCR 3.973(E)(2)

¹⁴. MCL 712A.19(6)

¹⁵. MCL 712A.19(11)

¹⁶. MCL 712A.18f(5)

¹⁷. MCL 712A.19(11); MCR 3.975(E)

¹⁸. MCR 3.973(E)(3)

¹⁹. MCL 712A.18f(5)

infrequent, the court shall determine why parenting time did not occur or was infrequent.

- (c) The extent to which the parent complied with each provision of the case service plan, prior court orders, and an agreement between the parent and the agency.
- (d) Likely harm to the child if the child continues to be separated from his or her guardian, or custodian.
- (e) Likely harm to the child if the child is returned to his or her parent, guardian, or custodian.²⁰

After review of the case service plan, the court is to determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to be placed in foster care or that caused the child to remain in foster care.²¹

10.1.7. *Supplemental Orders*

Following the review of case progress, the court may modify any part of the case service plan, including but not limited to prescribing additional services that are necessary to rectify the conditions that caused the child to be placed in foster care or to remain in foster care and prescribing additional actions to be taken by the parent, guardian, custodian, or nonparent adult to rectify the conditions that caused the child to be placed in foster care or to remain in foster care.²² The court is also to determine the continuing necessity and appropriateness of the child's placement.²³ Thus the court may enter the following supplemental orders:

- (1) order return of the child home,
- (2) order placement of the child if removal from the parent, guardian, or legal custodian would be appropriate for the welfare of the child,
- (3) change the placement of the child
- (4) modify the dispositional order,
- (5) modify any part of the case service plan,
- (6) enter a new dispositional order, or
- (7) continue the prior dispositional order²⁴

10.1.8. *Returning Child Home Without Review Hearing*

²⁰. MCL 712A.19(6)

²¹. MCL 712A.19(7); MCR 3.975(F)(2)

²². MCL 712A.19(7)(a)&(b)

²³. MCL 712A.19(8)

²⁴. MCR 3.975(G)

Unless waived, if not less than 7 days notice is given to all parties prior to the return of a child home, and if no party requests a hearing within the 7 days, the court may issue an order without a hearing permitting the agency to return the child home.²⁵

10.2. PERMANENCY PLANNING HEARING

10.2.1. *Purpose*

Time is the child's most scarce commodity. The years can pass quickly without permanent decisions being made as to where the child should spend his or her childhood and who his or her primary caretakers will be. Experience with foster care in the preceding decades has taught us that failure to decide on a long-term plan for a child is a more pervasive and harmful problem than deciding wrongly. Considering how difficult these decisions are -- between termination of parental rights and return of a child to an environment that may not be quite what we would like it to be -- temporizing, or putting off the decision, is very, very common.

The first preference at a permanency planning hearing is for the child to be returned to the biological parents, with a second preference for some other permanent plan including termination of parental rights and adoption. Continued temporary foster care is the least favored of these choices, but appropriate in some cases.

Michigan law requires that if a child remains in foster care for an extended time and without parental rights to the child being terminated, the court shall conduct a permanency planning hearing at which the court may determine:

- 1) that the child is to return to the parent, guardian or legal custodian;
- 2) a petition to terminate parents rights should be filed;
- 3) the child may be placed in legal guardianship;
- 4) the child may be permanently placed with a fit and willing relative; or
- 5) the child may be placed in another planned permanent living arrangement, but only in those cases where the agency has documented to the court a compelling reason for determining that it would not be in the best interest of the child to follow one of the options listed in subrules (1)-(4).²⁶

²⁵. MCL 712A.19(10); MCR 3.975(H)

²⁶. MCL 712A.19a; MCR 3.976(A)

10.2.2. *Time*

A permanency planning hearing is required 364 days after the filing of the original petition. In practice that means a permanency planning hearing is due one year after the preliminary hearing for most cases, if the child remains in placement. The court may combine a permanency planning hearing with a dispositional review hearing.²⁷

10.2.3. *Notice*

Written notice of a permanency planning hearing must be served at least 14 days before the hearing and must include a brief statement of the purpose of the hearing and notice that the hearing may result in further proceedings to terminate parental rights.²⁸ Notice shall be served on the following:

- (a) The agency. The agency shall advise the child of the hearing if the child is 11 years of age or older.
- (b) the foster parent or custodian of the child.
- (c) If the parental rights of the child have not been terminated, the child's parents.
- (d) If the child has a guardian, the guardian of the child.
- (e) If the child has a guardian ad litem, the guardian ad litem for the child.
- (f) If tribal affiliation has been determined, the elected leader of the Indian tribe.
- (g) The attorney for the child, the attorneys for each party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.
- (h) If the child is 11 years of age or older, the child.
- (i) Other persons as the court may direct.²⁹

10.2.4. *Evidence*

At permanency planning hearings all relevant and material evidence, including oral and written reports, may be received by the court and relied upon to the extent of its probative value. The parties are to be afforded an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.³⁰ The court is required to consider any written, or oral information concerning the child from the child's

²⁷. MCL 712A.19a(1)

²⁸. MCL 712A.19a(5); MCR 3.976(C)

²⁹. MCL 712A.19a(5)

³⁰. MCR 3.976(D)(2)

parent, guardian, custodian, foster parent, child caring institution, or relative with whom the child is placed, in addition to any other evidence offered at the hearing.³¹

10.2.5. *First Priority: Return Home*

The statute creates a series of rebuttable presumptions for the permanency planning hearing, which creates a hierarchy of preferred choices for children in foster care. The preferred resolution is for the child to be returned to the biological family

If parental rights to the child have not been terminated and the court determines at a permanency planning hearing that the return of the child to his or her parent would not cause a substantial risk of harm to the child's life, physical health, or mental well-being, the court shall order the child returned to his or her parent. In determining whether the return of the child would cause a substantial risk of harm to the child, the court shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan prepared under section 18f of this chapter as evidence that return of the child to his or her parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being. In addition to considering conduct of the parent as evidence of substantial risk of harm, the court shall consider any condition or circumstance of the child that may be evidence that a return to the parent would cause a substantial risk of harm to the child's life, physical health, or mental well being.³²

Thus the first presumption in the statute, reflecting the state policy, which prefers children in their own homes, is that children be returned to his or her parent. Note that the statute *requires* that children be returned to their parents' custody unless return would cause "a substantial risk of harm". MCR 3.965(C)(2) requires "If continuing the child's residence in the home is contrary to the welfare of the child, the court shall not return the child to the home, but shall order the child placed in the most family-like setting available consistent with the child's needs". The statute reflects an appreciation that removal and continued placement in foster care contains its own risks to children; foster care is by no means problem-free.

The centrality of the case plan is also reflected in this provision. Failure of a parent to substantially comply with the terms and conditions of the case plan can itself be considered evidence that a return would cause a substantial risk of harm to the child. The statutory structure attempts to

³¹. MCL 712A.19a(9)

³². MCL 712A.19a(6)

identify the family problem reasonably clearly, focus rehabilitative efforts on those problems in a twelve-month period, and then come to some long-term plan at the permanency planning hearing. A parent's failure to even cooperate with the case plan is some indication that they are unwilling or unable to correct the problems that brought the child under the jurisdiction of the court.

10.2.6. *Second Priority: Initiate Termination Proceedings*

The second most preferred resolution of the permanency planning hearing is that the agency file a petition to terminate the parents' rights to the child so that the child may be eligible for adoption or other long term permanency plans.

If the court determines at a permanency planning hearing that the child should not be returned to his or her parent, the court shall order the agency to initiate proceedings to terminate parental rights to the child not later than 42 days after the permanency planning hearing, unless the agency demonstrates to the court that initiating the termination of parental rights to the child is clearly not in the child's best interests.³³

If the court decides that return of the child to the parents would cause a substantial risk of harm, the default position is that the agency must file a petition for termination of parental rights within 42 days. That is, if the court decides nothing else but that the child cannot be returned to the parents, the agency is required to act. The court itself does not direct the filing of the petition; it must, after all, objectively consider such a petition at a later time. The statute requires that the agency act if the court makes no more findings than that the child must continue in foster care.

The agency is relieved of its obligation to file a termination of parental rights petition, however, if it demonstrates to the court that initiating termination is *clearly* not in the child's best interests. A delay in filing the termination petition is not warranted if the agency pleads they are too busy or that the termination petition would cause the parents considerable distress. The focus at this point is on the *child's* interests.

10.2.7. *Third Priority: Continued Foster Care*

³³. MCL 712A.19a(7)

The third, and least favored, result of the permanency planning hearing is that the child be continued in foster care, either for a limited period or on a long-term basis.

If the agency demonstrates under subsection (7) that initiating the termination of parental rights to the child is clearly not in the child's best interests, then the court shall order either of the following alternative placement plans:

(a) If the court determines that other permanent placement is not possible, the child's placement in foster care shall continue for a limited period to be stated by the court.

(b) If the court determines that it is in the child's best interests, the child's placement in foster care shall continue on a long-term basis.³⁴

Option (a) above recognizes that a rehabilitative plan may be proceeding appropriately but will require some additional time. For example, a long-term residential drug treatment program may be required and the parent is several months shy of completing it. The requirement that the court state the limited term of foster care helps maintain the discipline of the permanency planning philosophy.

The option of long-term foster care reflects the situation in which a youngster may be placed for a long period with relatives or with a foster family using a Permanent Foster Family Agreement and is certainly an appropriate permanent plan for some youngsters. "Permanent Foster Family Agreement" is defined in the statute as:

...an agreement for a child 14 years old or older to remain with a particular foster family until the child is 18 years old under standards and requirements established by the family independence agency, which agreement is among all the following:

- (i) The child.
- (ii) If the child is a temporary ward, the child's family.
- (iii) The foster family.
- (iv) The child placing agency responsible for the child's care in foster care.³⁵

10.3. REVIEW OF CHILD'S PROGRESS AT HOME

³⁴. MCL 712A.19a(8)

³⁵. MCL 712A.13a(1)(h)

10.3.1. *Purpose*

The court may take jurisdiction of a child and continue the child with his or her parents, or may return a child home during the dispositional review process, but wish to retain jurisdiction. The court is required to periodically review the progress of a child not in foster care over whom it has retained jurisdiction.³⁶

10.3.2. *Time*

For a child who remains at home following the initial dispositional hearing, the progress review must take place no later than 182 days after the original order of disposition. The review shall occur no later than 182 days after the child returns home when the child is no longer in foster care.³⁷

10.3.3. *Procedure*

The court rules do not require a hearing for this review but require that "the court shall periodically review the progress of a child not in foster care over whom it has retained jurisdiction."³⁸

10.4. CHANGE IN PLACEMENT OF COURT WARDS AT HOME

10.4.1. *Generally*

The court may not order a change in placement of a child solely on the basis of a progress review.³⁹ If the child over whom the court has jurisdiction is at home the court must conduct a hearing before it can order the placement of the child. The parties are to receive notice of the hearing, as provided in MCR 3.920 and MCR 3.921.⁴⁰

10.4.2. *Emergency Removal*

If the court orders removal of the child from the parent to protect the child's health, safety, or welfare, the court must conduct an emergency removal hearing no later than 24 hours after the child has been taken into custody, excluding Sundays and holidays as defined in MCR 8.110(D). Unless the child is returned to the parent pending the dispositional review,

³⁶. MCR 3.974(A)(1)

³⁷. MCR 3.974(A)(2)

³⁸. MCR 3.974(A)(1)

³⁹. MCR 3.974(A)(3)

⁴⁰. MCR 3.974(B)(2)

the court must make a written determination that the criteria for placement listed in MCR 3.965(C)(2) are satisfied.⁴¹ Those criteria are:

(a) if continuing the child's residence in the home is contrary to the welfare of the child, the court shall not return the child to the home, but shall order the child placed in the most family-like setting available consistent with the child's needs.⁴²

If the child remains in placement on an emergency basis, a review hearing must commence within 14 days after the child is placed by the court, except for good cause shown. The same procedure and rules of evidence that apply to the dispositional review hearing apply to a review hearing following emergency removal.⁴³

10.5. POST TERMINATION REVIEW HEARING

10.5.1. Purpose

In order to remain eligible for federal foster care funds, each state must have an on-going review system of children in foster care, including children who are permanent wards of the court awaiting adoption.⁴⁴ Michigan requires courts to conduct a hearing every 91 days for so long as the child remains in foster care, including after termination of parental rights.⁴⁵ The post termination reviews are to review the child's placement in foster care and the progress being made toward the child's adoption or other permanent placement.⁴⁶ The court is required to make findings on whether reasonable efforts have been made to establish a permanent placement for the child, and may enter such orders, as it considers necessary in the best interests of the child.⁴⁷

10.6. FOSTER CARE REVIEW BOARD

10.6.1. Generally

The Foster Care Review Board Program is a system of third party review established by law intended to improve children's foster care programs throughout the state.⁴⁸ The program is administered by the State Court Administrative Office of the Michigan Supreme Court and is comprised of

⁴¹. MCR 3.974(B)(3)

⁴². MCR 3.965(C)(2)

⁴³. MCR 3.974(C)

⁴⁴. 42 USC 675(5)

⁴⁵. MCL 712A.19(3)

⁴⁶. MCL 712A.19c(1); MCR 3.978(A)

⁴⁷. MCR 3.978(C)

⁴⁸. MCL 722.131-139a

citizen volunteers serving on thirty local boards operating throughout the state.⁴⁹ Board volunteers receive an initial two-day orientation training and two days of additional training each year.

10.6.2. Case Reviews

If the Foster Care Review Board selects a foster case for review, the court and supervising agency are required to cooperate with the review.⁵⁰ Local review boards consist of five volunteer citizens who meet one day per month to review cases of four to six sibgroups of children in foster care as a result of child abuse or neglect. The review happens in two stages: First the volunteers review the case materials detailing the reasons for the out of home placement and the agency's plan for services to the child and family. In the second stage the volunteer board conducts interviews with interested persons – the caseworker, parents, foster parents, attorneys for the children or parents and sometimes relatives, therapists or the children themselves. Following the review the local board makes written advisory recommendations to the court, the supervising agency and the interested persons. Once a case is selected for Foster Care Review Board, a local board will do a review once every six months.⁵¹

10.6.3. Recommendations for Policy and System Reform

A statewide Advisory Board made up of volunteer members of local boards and others meets regularly to review their experiences and to identify systemic barriers, which inhibit permanent placements for children. The authorizing statute requires the Foster Care Review Board to publish an annual report of their activities including:

- (c) An identification of problems that impede the timely placement of children in a permanent placement and recommendations for improving the timely placement of children in a permanent placement.⁵²

10.6.4. Reviewing Changes in Foster Care Placement

Foster parents may appeal to the Foster Care Review Board if the supervising agency intends to move or has moved a child to another foster home and the child has been in the care of the foster parents for over 30 days (or over 90 days if the new placement is intended to be with a relative).⁵³ See discussion in **Chapter 4, PLACEMENT**.

⁴⁹. Michigan Foster Care Review Board, 517-373-1956; Fax: 517- 373-8922

⁵⁰. MCL 722.136

⁵¹. MCL 722.137

⁵². MCL 722.139(2)(c)

⁵³. MCL 712A.13b

